

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

JOSEPH SUCEC,

Plaintiff,

v.

CIVIL ACTION NO. 5:11-cv-00968

THE GREENBRIER,

Defendant.

MEMORANDUM OPINION AND ORDER

On August 9, 2011, Plaintiff filed his Complaint in the Court of Common Pleas of Adams County, Pennsylvania, alleging that the Defendant issued him a gift card with an expiration date of less than five years in violation of the Credit Card Accountability Responsibility and Disclosure Act [CCARDA], the Electronic Funds Transfer Act [EFTA], 15 U.S.C. §§ 1693, *et seq.*, and associated Regulations. Plaintiff seeks statutory damages under 15 U.S.C. § 1693m, his costs, and attorney's fees in the total amount of \$2,312.50.

Alleging subject matter jurisdiction under 28 U.S.C. § 1331, Defendant removed this matter to the United States District Court for the Middle District of Pennsylvania on September 13, 2011. On September 20, 2011, Defendant filed a Motion to Dismiss pursuant to Rules 12(b)(2) and 12(b)(6) of the Federal Rules of Civil Procedure contending that the Pennsylvania District Court did not have personal jurisdiction over it and Plaintiff did not sustain any ascertainable injury. By Memorandum and Order filed on November 14, 2011, the Pennsylvania District Court determined venue was improper and subsequently transferred the case to this Court.

On January 9, 2012, Defendant filed its Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. (Document 18). In light of Plaintiff's *pro se* status, the Court referred this matter to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition. (Document 27). On July 10, 2012, the Magistrate Judge submitted Proposed Findings and Recommendation ("PF&R") (Document 28), wherein it is recommended that this Court deny Defendant's Motion to Dismiss.

The Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of de novo review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). In addition, this Court need not conduct a de novo review when a party "makes general and conclusory objections that do not direct the Court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Objections to the PF&R were due no later than July 27, 2012. To date, neither party filed objections.

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the Proposed Findings and Recommendation (Document 28), and **ORDERS** that the Defendant's Motion to Dismiss (Document 18) be **DENIED**.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and to any unrepresented party.

ENTER: July 30, 2012



IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA